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Extrajudicial, summary or arbitrary executions

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on extrajudicial, summary or arbitrary executions submitted by Asma Jahangir, Special Rapporteur of the Commission on Human Rights, in accordance with paragraph 23 of General Assembly resolution 55/111 of 4 December 2000.

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Interim report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions

Summary

The present report covers activities undertaken in the period from 1 August 2000 to 1 June 2002, focusing on a number of issues that are of particular concern and that in the Special Rapporteur's view require special and urgent attention.

During the period under review, the Special Rapporteur transmitted communications to Governments or took other forms of action in relation to the following situations involving violations of the right to life: (a) non-implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment; (b) death threats; (c) deaths in custody; (d) deaths due to excessive use of force by law enforcement officials; (e) deaths due to attacks or killings by security forces; (f) extrajudicial killings attributed to paramilitary groups or private forces cooperating with or tolerated by the State; (g) violations of the right to life during armed conflicts; (h) expulsion, refoulement or return of persons to a country or place where their lives are in danger; (i) genocide; and (j) issues relating to the rights of victims.

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I. Introduction

1. On 26 August 1998, Asma Jahangir formally accepted her appointment as Special Rapporteur on extrajudicial, summary or arbitrary executions. At its fifty-first session, the General Assembly adopted resolution 51/92, requesting the Special Rapporteur to present an interim report to the Assembly at its fifty-second session. However, as Ms. Jahangir was appointed Special Rapporteur as late as August 1998, she was, unfortunately, not in a position to present a full report, but only an oral statement to the General Assembly at its fifty-second session. On 9 December 1998 the General Assembly adopted resolution 53/147, in which it requested the Special Rapporteur to present an interim report to the Assembly at its fifty-fifth session. On 24 October 2000, the Special Rapporteur presented her report, document A/55/288, dated 11 August 2000.

2. The present report covers activities undertaken in the period from 1 August 2000 to 1 June 2002, focusing on a number of issues that are of particular concern and that in the Special Rapporteur's view require special and urgent attention. Due to limitations of space, and in order to avoid unnecessary duplication, reference will be made when appropriate to earlier reports of the Special Rapporteur in which more detailed discussions on the issues concerned can be found. The Special Rapporteur regrets that she was unable to include more current material in the present report, as the deadline for the draft report was set at 26 June 2002.

II. Mandate

A. Terms of reference

3. For a detailed presentation of the terms of reference of the Special Rapporteur's mandate, see her reports to the Commission on Human Rights (E/CN.4/1999/39, paras. 4-5, E/CN.4/2000/3, paras. 4-5, E/CN.4/2001/9, paras. 5-6, and E/CN.4/2002/74, paras. 6-7).

B. Violations of the right to life upon which the Special Rapporteur takes action

4. For a more detailed discussion of the situations in which the Special Rapporteur has acted during the present reporting period, see her reports to the Commission (E/CN.4/2001/9, paras. 7-8, and E/CN.4/2002/74, paras. 8-9).

C. Legal framework

5. For an overview of the international standards by which the Special Rapporteur is guided in her work, see the report of her predecessor to the Commission on Human Rights at its forty-ninth session (E/CN.4/1993/46, paras. 42-68). The Special Rapporteur has largely followed the methods of work developed and applied by the previous Special Rapporteur, Bacre Waly Ndiaye, which are described in his report to the Commission at its fiftieth session (E/CN.4/1994/7, paras. 13-67), as well as his subsequent reports to the Commission (E/CN.4/1995/61, paras. 9-11, and E/CN.4/1996/4, paras. 11-12).

III. Activities

6. For a discussion of activities undertaken in the period under review, see the Special Rapporteur's last two reports to the Commission (E/CN.4/2001/9 and E/CN.4/2002/74).

Visits

7. Field missions are crucial to all mandates. They give the relevant mechanism visibility and test its reliability. Interaction with Governments and people allows for better and more objective information. A close scrutiny of the situation on the ground gives the Special Rapporteur more confidence in reaching conclusions and in making recommendations. Field research in specific countries also yields valuable data that can contribute to an understanding of patterns of human rights abuses and the root causes that give rise to and perpetuate violations of the right to life. It also lends support to the work of civil society. The choice regarding field visits is based on a number of factors

and not exclusively upon the increasing violations of human rights reported in a given country. The keenness of Governments to improve the situation, the role of non-governmental organizations and emerging signs of deterioration or improvement are some of the criteria considered. The Special Rapporteur is concerned, however, that the resources currently placed at her disposal do not always allow her to submit her mission reports in a timely manner, or to respond effectively to the calls and the need for field missions to be carried out in various parts of the world. It should also be recalled that the Special Rapporteur can conduct field missions only to countries that have officially invited her to visit in her mandated capacity. During the period under review, missions were carried out to Turkey and Honduras (see E/CN.4/2002/74/Add.1 and Corr.1 and E/CN.4/2003/3/Add.2).

IV. Situations involving violations of the right to life

8. During the period under review, the Special Rapporteur transmitted communications to Governments or took other forms of action in relation to the following situations involving violations of the right to life: (a) non-implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment; (b) death threats; (c) deaths in custody; (d) deaths due to excessive use of force by law enforcement officials; (e) deaths due to attacks or killings by security forces; (f) extrajudicial killings attributed to paramilitary groups or private forces cooperating with or tolerated by the State; (g) violations of the right to life during armed conflicts; (h) expulsion, refoulement or return of persons to a country or place where their lives are in danger; (i) genocide; and (j) issues relating to the rights of victims. Detailed accounts of correspondence and action taken by the Special Rapporteur in regard to these issues can be found in her reports to the Commission on Human Rights (E/CN.4/2001/9, paras. 23-50, and E/CN.4/2002/74, paras. 27-65). The information brought to the Special Rapporteur's attention and material gathered during field missions reveal certain trends and developments that she wishes to bring to the General Assembly's attention. In order to produce a more comprehensive overview and analysis of these issues and patterns, in the present report she has chosen to draw upon material received since her appointment, particularly information gathered and observations made during the field missions she has carried out since her appointment, i.e., to Albania and the former Yugoslav Republic of Macedonia (Kosovo situation, 1999), Mexico (1999), East Timor (1999), Nepal (2000), Turkey (2001) and Honduras (2001).

A. Violations of the right to life during armed conflict, especially of the civilian population and other non-combatants, contrary to international humanitarian law

9. A clearly discernible trend in recent years is the increasing number of civilians and persons hors de combat killed in situations of armed conflict and internal strife in various regions of the world. Many thousands of people not participating in hostilities have lost their lives in conflict situations. The Special Rapporteur is saddened by the fact that the majority of the victims of today's conflicts are civilians, including displaced persons and refugees, among them a large number of women and children. In some instances, the direct targeting of civilians has increasingly become a part of the tactics employed by the parties involved in order to spread terror among the larger public and cleanse an area of its population. There are also increasing reports of killings of journalists in areas of armed conflict.

10. During the wave of violence that swept East Timor in 1999, civilians came under repeated attack from pro-integrationist militias and Government forces. They were subjected to serious human rights abuses, including violations of the right to life. During the conflict in Kosovo, the direct targeting and killing of activists, lawyers, intellectuals and other well-known personalities were apparently carried out with the aim of spreading terror and depriving the Kosovo Albanian community and political leadership of persons of high moral standing capable of forging alliances and leading society. In Colombia, groups of displaced civilians — at times entire villages — continue to be subjected to armed attacks and extrajudicial killings by the parties to the ongoing internal conflict. The Special Rapporteur sent communications regarding reports of killings of civilians in various other countries, including Rwanda, Sri Lanka, the Democratic Republic of the Congo, Nepal, Myanmar and Nigeria.

11. The Special Rapporteur notes that in a number of cases signs of a deteriorating situation were not read as early warnings or were not addressed effectively and promptly. She wishes to draw attention to prolonged situations of armed conflicts, which continue to take a toll on the lives of many innocent people. The root cause is often the continued denial of human rights; but once conflict spirals upward the situation is exploited, and in many cases the leadership falls into the hands of disruptive forces that have little respect for human rights, thus perpetuating a cycle of violence that can linger on for years, or even decades, if not addressed at an early stage. The Special Rapporteur therefore feels a great obligation to report promptly on violations of extrajudicial, summary or arbitrary executions, as the early stages are critical for debate and strategy. A case in point is Afghanistan, where the Special Rapporteur intervened on several occasions. Over the last two years, hundreds of people, including children, humanitarian workers and prisoners, have been killed by Taliban forces and other warring factions. The series of large-scale killings in Afghanistan must be investigated in order to bring the perpetrators to justice. Indeed, the Special Rapporteur is of the opinion that there will be no sustainable, just and stable peace in Afghanistan if there is impunity for the perpetrators of those widespread and systematic killings, which might amount to crimes against humanity.

12. The Special Rapporteur has continued to follow the situation in the Chechen Republic of the Russian Federation, where Russian Government forces are reported to have committed grave human rights violations, including deliberate and targeted extrajudicial executions of unarmed civilians.

13. The violence in the territories occupied by Israel is a disturbing cause for gravest concern, as reports indicate that one fourth of the victims of human rights abuses there, including violations of the right to life, are children and youths. During the reporting period, the Special Rapporteur urged the Government of Israel to ensure that Government security forces were immediately ordered to act with restraint and to respect international human rights standards when carrying out their duties. She also demanded that the Government investigate all incidents of alleged killings by Government forces without delay and ensure that persons responsible for such crimes are brought to justice.

14. A cause for deepening concern for the Special Rapporteur is the increasing incidence of large-scale extrajudicial killings, the majority of the victims of which are reportedly civilians, carried out by security forces and armed groups reported to be sponsored, supported or tolerated by Governments. Atrocities against persons hors de combat committed by such elements have become particularly common in the context of internal disturbances and conflicts, but such incidents have also been reported in relation to conflicts with international dimensions. Such groups are usually supported or directed by the military or civilian intelligence services, which often results in systematic impunity for the perpetrators of grave human rights abuses. The Special Rapporteur fears that the increasing role of the intelligence agencies in many countries may lead to policies that could be detrimental to the security of civilians' lives. This apprehension has increased since the tragic incident of 11 September in the United States.

15. The Special Rapporteur continues to receive a large number of reports of violence and extrajudicial killings, the victims of which are mostly civilians, attributed to armed opposition groups, militia elements and other non-State actors. It should be noted that the Special Rapporteur's mandate allows her to intervene only when the perpetrators are believed to be Government agents or have a direct or indirect link with the State. During the visits of the Special Rapporteur there have been serious allegations of Government-spawned groups indulging in violence, terrorism or militancy. Such allegations are often hard to confirm or disprove. However, the Special Rapporteur wishes to express her deep concern over atrocities committed by non-State actors, which constitute serious violations of basic humanitarian and human rights principles. She also remains concerned that some Governments have made use of excessive and indiscriminate force in their efforts to counter armed opposition groups, which in some cases has involved summary executions of captured combatants and has resulted in extensive civilian casualties and fatalities.

16. The Special Rapporteur wishes to emphasize that the right to life allows for no derogations, not even in time of public emergency that threatens the life of the nation. This is particularly relevant at the present juncture, when Governments should not be tempted to misuse the international war against terrorism as a

justification for human rights abuses, including extrajudicial, summary or arbitrary executions. The Special Rapporteur maintains that at such critical moments of history international society must show a firm commitment to human rights and a greater resolve to uphold the principles of justice without discrimination. In this context, she is equally convinced that as long as armed groups enjoy long-term virtual impunity, they will be able to continue brazenly to perpetrate widespread killings of innocent civilians.

B. Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality

17. A cause for continued and deepening concern for the Special Rapporteur is the incidence of extrajudicial executions attributed to the police, armed forces or public employees in cases of crimes committed in connection with their duties, when the use of force is inconsistent with the criteria of absolute necessity and proportionality. Such incidents are not uncommon in States that have a strong legacy of militarization or where the armed forces are granted far-reaching law enforcement responsibilities, such as, for example, Turkey, Mexico, Honduras, Myanmar and Indonesia.

18. The Special Rapporteur noted that in a number of countries that she visited, including Turkey (see E/CN.4/2001/74/Add.1 and Corr.1), the bottlenecks within Government institutions gave rise to impunity for the offenders. Changes in governmental structures are therefore needed in order to reintroduce checks and balances and lighten the influence of the military over the legislature, the executive and the judiciary. Moving the law-enforcing agencies away from the influence of the armed forces could also help them develop their own expertise and acquaint themselves better with the international and domestic human rights standards pertaining to law enforcement. Finally, investigation agencies should be under the command of public prosecutors rather than under the authority of the Ministry of Interior.

19. In Mexico, the Special Rapporteur was alerted to a number of cases relating to abuse by the police and excessive or arbitrary use of force by the military. Some of the reports received point towards an entrenched culture of violence among some elements of the law enforcement authorities, who continue to perpetrate grave human rights violations with impunity. The anti-crime operations undertaken by the Mexican police and military have reportedly at times involved excessive or indiscriminate use of force and have on occasion claimed the lives of innocent civilians. While the Special Rapporteur fully appreciated the need to curb criminality, she was concerned that some of the measures taken by the Government, especially the assignment of army personnel to law enforcement duties, could work to the detriment of the overall rule of law and the enjoyment of human rights in Mexico. In this context, the Special Rapporteur encourages the demilitarization of society and discourages the deputation of the armed forces to maintain law and order or to eradicate crime.

20. During her mission to Honduras, the Special Rapporteur heard accounts of excessive use of force by police and armed forces and extrajudicial executions, including of a large number of children. The Special Rapporteur deplores the fact that prosecutions of members of the armed forces for human rights violations are rare and that investigations into the military's role in human rights abuses have been obstructed by the army. In this regard, the legacy of the immense power of the military has limited the capacity of civil institutions and delayed the growth of civil society, thereby weakening the justice system. Civil society is unable to challenge this situation, and the judiciary is not independent enough to take decisions that involve or affect the interests of the military.

21. Grave human rights violations committed by police or army personnel while performing law enforcement duties are also particularly common in the context of public demonstrations in countries facing internal disturbances and conflicts. During the period under review, the Special Rapporteur urged the Governments of several countries where she heard accounts of extrajudicial killings by such forces, such as Indonesia, India, Jamaica and Pakistan, to take immediate steps to ensure that the right to life of participants in demonstrations was protected and to provide the police with training and adequate equipment for non-lethal crowd control.

C. Impunity

22. For a more detailed discussion regarding the issue of impunity, compensation and rights of victims, see the Special Rapporteur's earlier reports, in which she has addressed these questions at length (for example, E/CN.4/2000/3, section V.E, and E/CN.4/2001/9, section V.C).

23. It is a cause for grave concern that in some countries impunity for serious human rights violations, including extrajudicial killings, has become systematic and institutionalized. The Special Rapporteur observes that justice is easily denied in societies where the perpetrators of human rights have acquired influence and power and the victims remain hopelessly disadvantaged. In many countries, impunity is the result of a weak and inadequate justice system that is either unwilling or unable to investigate and prosecute cases of grave human rights violations, including violations of the right to life. In some instances, the judiciary may be strongly influenced or even coerced by the executive: judges are poorly trained and are often appointed on the basis of political merits and contacts rather than professional or academic competence. In others, military and security forces simply ignore or overrule court decisions. Impunity can also be the direct product of laws explicitly exempting public officials, parliamentarians or certain categories of State agents from accountability or prosecution for grave human rights abuses. During her visits to countries, the Special Rapporteur has noted that laws providing immunity to parliamentarians and other public officials have tempted many leaders of criminal gangs to enter politics simply to hide behind such laws. Impunity can also arise from amnesty laws passed in the interest of political stability and national reconciliation.

24. The failure of the State to exercise due diligence in investigating and prosecuting human rights violations enables perpetrators to continue to commit grave human rights violations, including extrajudicial executions, in the knowledge that their crimes will not result in investigation or criminal prosecution. In some instances, Governments and the media even tend to build public opinion campaigns that support the cleansing of a particular group under the pretext of trying to create a climate for economic revival. The Special Rapporteur is concerned that such systematic impunity leads to an atmosphere of fear among the population and undermines citizens' trust in the law enforcement agencies and the justice system. It also widens the disparity between those who escape justice and the victimized who continue to suffer miscarriages of justice.

25. In order to overcome impunity, Governments need to show both political will and moral courage to confront human rights abuses by ensuring that strong, independent and effective institutions and mechanisms are in place to bring perpetrators to justice. These reforms are partly under way in some of the countries recently visited by the Special Rapporteur. In Turkey, for instance, the Special Rapporteur noted with satisfaction that the Government has introduced training programmes for both members of the judiciary and officials of the law enforcement agencies, which will hopefully help in curbing impunity. Efforts are also being made to enact new legislation that will entrust entirely to an independent body investigations into extrajudicial executions attributed to the police. In Honduras, the Ministry of Public Security is currently trying to purge the police force of unsuitable staff, especially those responsible for abuses of authority or human rights violations, while providing human rights training to new recruits.

26. The Special Rapporteur would like to stress that the international community has the important responsibility to combat systematic and widespread human rights violations, especially within regimes where democracy is still fragile. In this regard, the international community should support and assist Governments and members of civil society with the resources required, including funding and expertise, to continue their current process of democratization and protect the fundamental principles that the development of democracy depends upon. In this connection, in her reports the Special Rapporteur has recommended, inter alia, the setting up of technical cooperation programmes in Nepal and the establishment of an ombudsperson for children in Honduras.

27. In addition, the international community has the responsibility to combat systematic and widespread human rights violations by strengthening institutions with universal jurisdiction. The Special Rapporteur welcomes the entry into force on 1 July 2002 of the Statute of the International Criminal Court, which will have the potential to serve as a powerful weapon in the fight against impunity for grave human rights

violations, including extrajudicial, summary or arbitrary executions. The Special Rapporteur wishes to encourage further ratifications in order to widen the scope of the International Criminal Court.

D. Violations of the right to life of children

28. Over the reporting period, the Special Rapporteur's attention was drawn to reports of extrajudicial killings of children in Honduras, Guatemala and Nicaragua. Many of these cases were reported in the context of "social cleansing", in which street children are murdered or "disappeared" with impunity. As the reported cases grew increasingly frequent, and because the situation of children is a matter of great concern to the Special Rapporteur, she decided to carry out a fact-finding mission to Honduras, where allegations of extrajudicial killings of children were received regularly. A more detailed account of her findings on this issue may be found in her mission report (E/CN.4/2003/3/Add.2).

29. During the reporting period, the Special Rapporteur received documented reports of minors under the age of 18 who were killed as a result of excessive use of force or blatant neglect and denial of medical care by law enforcement officials. The majority of such acts are attributed to security officers, private vigilante groups or units of off-duty police and military, and are subsequently covered up by the authorities. These killings are symptoms of deeply rooted and complex social, economic and political problems coupled with surging crime rates, which continue to plague the human rights situation in these countries. Many such children, who constitute a large section of the world's population, have been orphaned by civil war or unrest or abused and rejected by disintegrated and poverty-stricken families.

30. The Special Rapporteur observed that in many countries, the allotment of national resources for child-related matters is not commensurate with the number of children and is grossly inadequate to protect their rights. There is a need to reprioritize resource allocations so that children are placed at the centre of all budget planning and so that priority is given to the protection and promotion of the civil, political, economic, social and cultural rights of children. Lack of respect for the rights of children exposes them to exploitation. They are sucked into gang wars and organized crime, where they are exposed to abuse and violence. Juvenile delinquency is then used as a justification for the killing of children by security forces in the name of maintaining law and order. Indeed, numerous reports indicate that the police systematically and routinely fail to report killings of children to the judicial authorities, and often write these cases off as part of gang wars and organized crime. A cause for serious concern is the situation in Honduras, where the climate of impunity is further perpetuated by a lack of official condemnation of human rights offenders and a prejudiced attitude on the part of the media, which often refer to these killings as "social cleansing operations" and portray the victims as "social undesirables" impeding the economic revival of the country.

E. Violations of the right to life of women

31. The Special Rapporteur is deeply disturbed by increasing reports of women being deliberately targeted and exposed to extreme violence, including extrajudicial killings, while the perpetrators of those human rights violations enjoy impunity for such crimes.

32. The Special Rapporteur is deeply concerned about the fact that social realities can compel many women to choose the path of violence if they find no alternative. It appears that in Nepal, the self-declared "people's war" has attracted many women, especially among the young. This can be explained by the fact that the position of women is traditionally weak and subordinate in Nepalese society, rendering such programmes, with their strong emphasis on equality, attractive both among the growing cadre of educated women and those of the disadvantaged in rural areas. In this connection, it is worth noting that in Nepalese society, women, especially the young, who leave their homes find it very difficult to return and be accepted back by their families or society in general, which results in further marginalization and gender-based discrimination. The Nepalese Government must take measures to empower women so that they are not deprived of their role in political, economic and social life.

33. During the period under review, the Special Rapporteur heard accounts of gender-based crimes that thrive on impunity. For example, during her mission to Mexico she was able to observe that the deliberate

inaction of the Government to protect the lives of its citizens because of their sex, and to investigate crimes whose victims were only young girls with no particular social status, generates a sense of insecurity among many women. At the same time, it indirectly ensures that perpetrators enjoy impunity for such crimes.

34. The Special Rapporteur has further received a considerable amount of information regarding traditional practices, particularly "honour killings", targeting women in many countries. In some countries, such as Sweden, the United Kingdom and Italy, the perpetrators are brought to justice, while in others impunity is the norm. The perpetrators of these crimes are mostly male family members of the murdered women, and they go unpunished or receive reduced sentences on the justification of having murdered to defend their misconceived notion of "family honour". The Special Rapporteur wishes to recall that she does not take up all cases of such killings, but has limited herself to acts approved or supported by Governments, or where perpetrators enjoy impunity by receiving the tacit support of States. In this regard, she wishes to remind Governments that they are obliged to protect the right of every individual to life, liberty and security by law and to adopt all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that are in violation of the human rights of women. She further refers to article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, which makes it obligatory for States parties to "condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake ... (b) To adopt appropriate legislative and other measures, including sanctions ..., prohibiting all discrimination against women". States parties are obliged (d) "To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation". They are required (e) "To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise" and are expected (f) "To take all appropriate measures ... to modify or abolish ... customs and practices which constitute discrimination against women".

35. During her mission to Turkey, the Special Rapporteur had the opportunity to gather information on "honour killings" of women, mostly occurring in the east and south-east of the country. Despite the involvement of a few women's rights organizations that reported that impunity for such cases was taken for granted, the Special Rapporteur noted with concern that all other non-governmental organizations dealing with human rights were of the opinion that "honour killings" were not a human right but a social issue. Reports from women's rights groups confirm that only a few cases come to light, as the local authorities and society in general condone the crime. The Special Rapporteur welcomes the initiative of the Turkish Government, which, as a preventive measure, runs shelter homes; however, since existing shelters are insufficient and ineffective in guaranteeing the right to life of threatened women, she is dismayed that the Government does not, as a matter of policy, arrest family members threatening the lives of victimized women. In this regard, the Special Rapporteur is also concerned at the policy adopted by other Governments to "protect" potential victims of "honour killings". While those threatening the lives of these women enjoy total freedom, the victims are placed in prisons or custodial and correctional homes, sometimes for years on end. They are not free to leave these institutions once confined to them. The Special Rapporteur therefore considers these so-called protected women under perpetual threat to their life.

36. A comprehensive policy has to be drawn up to abolish practices that impinge upon the life of any person purely because of sexual distinction. The Special Rapporteur intends to continue to follow individual cases to assess the level of impunity extended to such crimes. In this connection, she would also like to acknowledge the efforts made by some Governments and judges in bringing the perpetrators of such violations to justice. Their endeavours to counter these gross violations of human rights must be supported by the international community. In this regard, the Special Rapporteur was particularly encouraged to follow the work undertaken by some leading international non-governmental organizations. Their campaigns, along with increased media exposure, have attracted much-needed international attention to the practice of "honour killings".

F. Violations of the right to life of sexual, ethnic, religious or linguistic minorities

37. The Special Rapporteur wishes to note that the continuing prejudice against members of sexual minorities and, especially, the criminalization of matters of sexual orientation increase the social stigmatization of these persons. This in turn makes them more vulnerable to violence and human rights abuses, including death threats and violations of the right to life, which are often committed in a climate of impunity. The Special Rapporteur further notes that the often tendentious media coverage of this subject further contributes to creating an atmosphere of impunity and indifference in relation to crimes committed against members of sexual minorities.

38. Furthermore, the Special Rapporteur has continued to receive serious reports of persons having been subjected to death threats or extrajudicially killed because of their sexual orientation. During the reporting period she sent urgent appeals in this connection to the Governments of Argentina, Ecuador, Mexico, Somalia, Jamaica, Brazil and El Salvador. During her visit to Honduras, the Special Representative had the opportunity to talk to representatives of sexual minorities and organizations working to protect and promote the human rights of these persons. Among the allegations brought to her attention, there were several reports of death threats against and killings of members of sexual minorities. In 1999, a young gay man was allegedly shot dead by private security guards close to a gas station in San Pedro Sula. When members of a non-governmental organization tried to report the case to the police, they were allegedly threatened and verbally abused at the police station. The Special Rapporteur was told that no investigation into this killing had been carried out. Similarly, in May 2001 a transsexual sex worker was reportedly murdered behind the San Pedro Sula Cathedral. While it is reported that the police removed the body from the scene, it is alleged that no investigations into the case have been initiated. Non-governmental sources alleged that some 200 gay and transsexual sex workers were killed in Honduras in the period from 1991 to 2001. Reportedly, few of these cases have ever been officially recorded, and fewer still investigated.

39. The Special Rapporteur acted on behalf of a variety of persons considered to belong to national, ethnic, religious and/or linguistic minorities in their respective countries. Urgent appeals were sent to Brazil, China, Colombia, India, Indonesia and Pakistan. In addition, the Special Rapporteur sent allegations of violations of the right to life to the Government of the Democratic Republic of the Congo. A cause for concern is the situation of the Uighur community in China, which reportedly continues to be exposed to grave human rights abuses at the hands of the Chinese authorities. The Special Rapporteur is also concerned that members of indigenous communities in a number of Latin American countries continue to be exposed to violence and attacks, including extrajudicial killings. The Special Rapporteur sent an urgent appeal to the Government of Brazil expressing her concern over the safety of members of the Macuxi and Wapixana communities, as well as persons working directly with them. She also wrote to the Government of Colombia, following reports that police officers had forcibly evicted members of the U'wa community in Cedeno and La China, in the municipalities of Cubara and Toledo, north of Santander. Reports indicated that three minors had lost their lives as a result of this operation. It was further alleged that 11 adults and 4 children between 5 and 10 years of age had disappeared in connection with the incident.

40. In this context, the Special Rapporteur wishes to express her particular alarm over reports from China describing a large number of cases in which detainees, many of whom were followers of the Falun Gong movement, had died as a result of severe ill-treatment, neglect or lack of medical attention. She takes particular note of allegations that 15 female prisoners, all reportedly members of the Falun Gong movement, died as a result of torture in June 2001 in Wanjia Labour Camp in Heilongjiang Province.

G. Capital punishment

41. In the discharge of her mandate, the Special Rapporteur takes action in cases of capital punishment in which there is reason to believe that international restrictions pertaining to the use of the death penalty are not respected. These provisions of international law, along with a number of resolutions adopted by United Nations bodies, stipulate that capital punishment shall be allowed only as an extreme measure for the most serious crimes and only in cases where the highest standards of fair trial are met.

Furthermore, under international law the death penalty shall not be applied to juvenile offenders, expectant or recent mothers or persons suffering from mental illness or handicap. The Special Rapporteur has discussed these issues at length in her reports to the Commission on Human Rights (most recently in E/CN.4/2001/9, section V.F, and E/CN.4/2002/74, section V.F).

42. Capital punishment for juvenile offenders is prohibited under international law. The Convention on the Rights of the Child, which has been ratified by all States except the United States of America and Somalia, unequivocally excluded the use of the death penalty for persons accused of crimes committed before the age of 18. The same restriction is also found in article 6, paragraph 5, of the International Covenant on Civil and Political Rights. During the period under review, the Special Rapporteur has intervened in cases of juvenile offenders facing the death penalty in the Democratic Republic of the Congo, India, the Islamic Republic of Iran and the United States of America.

43. During the present reporting period, the Special Rapporteur has also acted on cases in which persons suffering from mental handicap or illness have been sentenced to death in the United States and Yemen. She notes that in its resolution 1989/64 the Economic and Social Council recommended that States strengthen the protection of the rights of those facing the death penalty by, inter alia, eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence. Moreover, the "Safeguards guaranteeing protection of the rights of those facing the death penalty" (Council resolution 1984/50, annex) stipulate that the death penalty shall not be carried out on persons who have become insane.

44. The death penalty should not be imposed for crimes that do not fall within the category of "the most serious crimes", as stipulated in article 6, paragraph 2, of the International Covenant on Civil and Political Rights. Moreover, paragraph 1 of the "Safeguards guaranteeing protection of the rights of those facing the death penalty" states that the scope of crimes subject to the death penalty should not go beyond intentional crimes with lethal or other extremely grave consequences.

45. Most countries with a mature legal system have removed the death penalty from their laws. Other States that retain it find it difficult to ensure that all restrictions and standards guaranteeing fair trial are met in each and every case. The Special Rapporteur and her predecessor have tried to draw attention to the fallibility of even the best of legal systems, and the lack of capacity in a number of retentionist countries for observing relevant safeguards and limitations when applying the death penalty. She notes that even in retentionist countries with an overall strong legal system, safeguards required to ensure a fair trial have sometimes been found missing on appeal, and even after the appeal stage. This raises the possibility that cases that have not been pursued vigorously escape the attention of the legal system. The Special Rapporteur urges Governments to provide comprehensive information on cases in which the death penalty has been imposed to national and international human rights organizations so that they are able to ensure that all safeguards and guarantees applicable in imposing the death penalty have indeed been observed. In the experience of the Special Rapporteur, some countries do not even give access to simple data on the death penalty. Information on the subject is not shared by many Governments, and there is a lack of transparency in the circumstances surrounding the imposition of death penalty.

V. Conclusions and recommendations

46. In addition to the concluding remarks and recommendations presented in her last two reports to the Commission on Human Rights (E/CN.4/2001/9, section VII, and E/CN.4/2002/74, section VII), the Special Rapporteur wishes to draw attention to the following:

Conclusions

47. **The root causes of extrajudicial killings and the need for their prevention have by now been repeated over and over again in the reports of the Special Rapporteur and her predecessor. These are being addressed by countries that are sincere in upholding the rule of law. Others pretend to follow the recipe but do not follow up with resolve.**

48. **There is a growing expectation for the United Nations to intervene in situations of armed conflict and where extrajudicial killings persist. The high expectations are often unrealistic given the resources at the disposal of the United Nations. However, this call for United Nations action should**

be seen as a clear indication of the desire of the people and the need for a neutral referee.

Recommendations

49. Governments are urged to demilitarize their societies and train law enforcement agencies in dealing with civilians, particularly during public demonstrations.

50. The judicial system is key in controlling human rights abuses. The judiciary must be independent, and investigations in cases of extrajudicial killings must be carried out impartially and without influence.

51. There is an urgent need to respect the lives of children. Governments must monitor the situation and devise comprehensive policies to end killings of children by the police or armed groups.

52. Non-governmental organizations must have free access to data and related information on death penalty cases.